

NATIONAL ASSEMBLY SECRETARIAT

REPORT OF THE STANDING COMMITTEE ON INTERIOR AND NARCOTICS CONTROL ON THE ANTI-TERRORISM (AMENDMENT) BILL, 2013, (ORDINANCE NO.VII OF 2013)

I, the Chairman of the Standing Committee on Interior and Narcotics Control have the honor to present this report on the Bill further to amend the Anti-terrorism Act 1997 (XXVII of 1997) [The Anti-terrorism (Amendment) Bill, 2013] (Ordinance No. VII, 2013), referred to the Committee on the 7th November, 2013.

2. The Committee comprises the following members:

1. Rana Shamim Ahmed Khan	Chairman
2. Syed Javed Ali Shah	Member
3. Mr. Ghalib Khan	Member
4. Dr. Ibadullah	Member
5. Sheikh Muhammad Akram	Member
6. Syed Iftikhar-ul-Hassan	Member
7. Makhdoomzada Basit Bokhari	Member
8. Ms. Tahmina Daultana	Member
9. Mr. Nauman Islam Sheikh	Member
10. Mr. Ehsan-ur-Rehman Mazari	Member
11. Nawab Muhammad Yousuf Talpur	Member
12. Ms. Naeema Kishwer Khan	Member
13. Dr. Arif Alvi	Member
14. Syed Asif Hasnain	Member
15. Sardar Nabil Ahmed Gabol	Member
16. Mr. Sher Akber Khan	Member
17. Mian Shahid Hussain Khan Bhatti	Member
18. Sayed Essa Nori	Member
19. Makhdoom Syed Ali Hassan Gillani	Member
20. Minister for Interior and Narcotics Control	Ex-Officio Member

3. The Committee in its meetings held on 31st December, 2013, 8th and 13th January, 2014 considered the said Bill in detail and proposed the following amendments, therein:-

Clause 5

- (a). (i) that in clause 5, for paragraph (i), the following shall be substituted namely:-

“(1) An investigating officer under this Act shall be an officer or Police Officer not below the rank of Inspector or equivalent or, if the Government deems necessary Joint Investigation Team to be constituted by the Government shall be headed by an Investigating Officer of Police not below the rank of Superintendent of Police, (BS-18) and other officers of JIT may include equivalent rank from Intelligence Agencies, Armed Forces and Civil Armed Forces. The JIT shall comprise five members and for the meeting purposes the quorum shall consists of three members.

The investigating officer or the JIT, as the case may be, shall complete the investigation in respect of cases triable by the court within thirty working days. The report under section 173 of the Code shall be signed and forwarded by the investigating officer of police directly to the court:

Provided that where the provisions of sections 4 and 5 have been invoked, the investigation shall be conducted by the JIT comprising members of armed forces or civil armed forces, as the case may be, intelligence agencies and other law enforcement agencies including an investigating officer of police not below the rank of Inspector who shall sign the report under section 173 of the Code and forward it to the Court:

Provided further that, where investigation is not completed within a period of thirty days from the date of recording of the first information report under section 154 of the code, the investigating officer or the JIT shall, within three days after expiration of such period, forward to the Court through the Public Prosecutor, an interim report under section 173 of the Code, stating therein the result of investigation made until then and the Court shall commence the trial on the basis of such interim report, unless, for reasons to be recorded, the Court decides that the trial may not so commence. The interim report shall be signed by the investigating officer of police:

Provided that the head of Law Enforcement Agency having jurisdiction shall conduct an internal review of all actions initiated under this Act on monthly basis.”.

Clause 9

- (b) that in clause 9, in the proposed section 27B, for the word, “solely” occurring twice, the words “may be done” shall be substituted.

4. The Committee in majority recommended that the Bill as reported by the Committee (Annex-B) may be passed by the National Assembly. The Bill as introduced in the National Assembly is at Annex "A". The Note of dissent submitted by Syed Asif Hasnain and Sardar Nabil Ahmed Gabol, MNAs is at Annex "C". The proposal submitted by Dr.Arif Alvi,MNA is at Annex "D". The Note of Dissent of Mrs. Naeema Kishwer Khan, MNA is at (Annexure-E).

Sd/-

(Rana Shamim Ahmed Khan)
Chairman

Sd/-

(Karamat Hussain Niazi)

Secretary

Islamabad, 29th January, 2014

[AS INTRODUCED IN THE NATIONAL ASSEMBLY]

A

Bill

further to amend the Anti-terrorism Act, 1997

WHEREAS it is expedient further to amend the Anti-terrorism Act 1997 (XXVII of 1997), for the purposes hereinafter appearing;

Short title and commencement.—(1) This Act may be called the Anti-terrorism (Amendment) Act, 2013.

(2) It shall come into force at once.

2. **Amendment of section 5, Act XXVII of 1997.**—In the Anti-terrorism Act, 1997 (XXVII of 1997), hereinafter referred to as the said Act, in section 5, in sub-section (2), in paragraph (i), for the words “when fired upon” the words and comma “after forming reasonable apprehension that death, grievous hurt or destruction of property may be caused by such act” shall be substituted.

3. **Amendment of section 11EEEE, Act XXVII of 1997.**—In the said Act, in section 11EEEE,—

(i) for sub-section (1), the following shall be substituted, namely,—

“(I) The Government or, where the provisions of section 4 have been invoked, the armed forces or civil armed forces, as the case may be, subject to the specific or general order of the Government in this regard, for period not exceeding three months and after recording reasons thereof, issue order for the preventive detention of any person who has been concerned in any offence under this Act relating to the security or defence of Pakistan or any part thereof, or public order relating to target killing, kidnapping for ransom, and extortion/bhatta, or the maintenance of supplies or services, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned, for purpose of inquiry:

Provided that further detention of such person if necessary shall be subject to provisions of Article 10 of the Constitution.”:

- (ii) in sub-section (2), for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be inserted, namely:-

“Provided that where the detention order has been issued by the armed forces or civil armed forces under sub-section (1), the inquiry shall be conducted by the JIT comprising members of armed forces or civil armed forces, as the case may be, intelligence agencies and other law enforcement agencies, including a police officer not below the rank of Superintendent of Police; and

- (iii) after sub-section (2) amended as aforesaid, the following new sub-section shall be inserted, namely:-

“(2a) The provisions of sub-sections (1) and (2) amended as aforesaid shall remain in force for such period as may be notified by the Government from time to time:

Provided that such period shall not exceed two years from the commencement of the enactment of this Act by Parliament.”.

4. **Amendment of section 18, Act XXVII of 1997.**-In the said Act, in section 18, in sub-section (1), the word “Provincial” shall be omitted.

5. **Amendment of section 19, Act XXVII of 1997.**-In the said Act, in section 19,-

- (i) for sub-section (1), the following shall be substituted, namely:-

“(1) The offences under this Act shall be investigated by a police officer not below the rank of Inspector or, where the Government deems it necessary, by a Joint Investigation Team (JIT) to be constituted by the Government comprising the investigating officer of police not below the rank of Inspector, and officers from intelligence agencies and other law enforcement agencies. The investigating officer or the JIT, as the case may be, shall complete the investigation in respect of cases triable by the Court within thirty working days. The report under section 173 of the Code shall be signed and forwarded by the investigating officer of police directly to the Court:

Provided that where the provisions of section 4 and 5 have been invoked, the investigation shall be conducted by the JIT comprising members of armed forces or civil armed forces, as the case may be, intelligence agencies and other law enforcement agencies including an investigating officer of police not below the rank of Inspector who shall sign the report under section 173 of the Code and forward it to the Court:

Provided further that, where investigation is not completed within a period of thirty days from the date of recording of the first information report under section 154 of the code, the investigating officer or the JIT shall, within three days after expiration of such period, forward to the Court through the Public Prosecutor, an interim report under section 173 of the Code, stating therein the result of investigation made until then and the Court shall commence the trial on the basis of such interim report, unless, for reasons to be recorded, the Court decides that the trial may not so commence. The interim report shall be signed by the investigating officer of police.”;

- (ii) after sub-section (1A), the following new sub-section shall be inserted, namely:-

“(1B) Where any person has been arrested by the armed forces or civil armed forces under section 5, he shall be handed over to the investigating officer of the police station designated for the purpose by the Provincial Government in each District.”;

- (iii) for sub-section (7), the following shall be substituted, namely:-

“(7) The Court shall, on taking cognizance of a case, proceed with the trial from day-to-day and shall decide the case within seven days, failing which the matter shall be brought to the notice of the Chief Justice of the High Court concerned for appropriate directions, keeping in view the facts and circumstances of the case.”;

- (iv) in sub-section (8), for the words “consecutive adjournments during the trial of the case” the words “adjournments during the trial of the case and that too on imposition of exemplary costs” shall be substituted; and

- (v) in sub-section (8a), after the word “sub-section” the brackets, figure and word “(7) or” shall be inserted.

6. **Insertion of new section, Act XXVII of 1997.**—In the said Act, after section 19A, the following new section shall be inserted, namely:-

“19B Pre-trial scrutiny.—Before commencement or the trial, the Prosecutor shall scrutinize the case file to ensure that all pre-trial formalities have been completed so that the actual trial proceeds uninterrupted from day-to-day.”

7. **Amendment of section 21, Act XXVII of 1997.**—In the said act, in section 21.—

- (1) in sub-section (2), after the word “proceedings” and full-stop at the end, the following shall be inserted, namely:-

"These measures may include the following, namely:-

- (a) screens may be used during trial to shield witnesses, Judges and Prosecutors from public view;
- (b) trial may be held in jail premises or through video link
- (c) witness protection programmes may be established by the Government through law or rules.

The Provincial Government shall take necessary steps to ensure that prisoners in Jails do not have access to mobile phones."; and

- (2) after sub-section (3), the following new sub-section shall be inserted, namely:-

"(4) The provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force, including the Qanun-e-Shahdat, 1984(P.O.No.10 of 1984).".

8. **Amendment of section 27, Act XXVII of 1997.**-(1) Section 27 shall be renumbered as sub-section (1) thereof, and,-

- (i) in the short title, after word "investigation" the words "and reward for successful investigation" shall be added; and
- (ii) after sub-section (1) renumbered as aforesaid, the following new sub-section shall be inserted, namely,-

"(2) Incentive systems shall be introduced by the Provincial Governments providing for appropriate rewards to investigating officers who conduct successful investigation.".

9. **Insertion of new section, Act XXVII of 1997.**-In the said Act, after section 27A, the following new section shall be inserted, namely:-

"27B. Conviction solely on the basis of electronic or forensic evidence etc.-Notwithstanding anything contained in this Act or Qanun-e-shahadat, 1984 (P.O.No.10 of 1984) or any other law for the time being in force, the conviction of an accused for an offence under this Act solely on the basis of electronic or forensic evidence or such other evidence that may have become available because of modern devices or techniques referred to in Article 164, of the Qanun-e-Shadat, 1984 (P.O.No.10 of 1984), shall be lawful.".

- 10. **Amendment of section 28, Act XXVII of 1997.**-In the said Act, in section 28,-

- (i) after sub-section (1), the following new sub-section shall be inserted, namely:-

“(1A) Where it appears to the Government that it would be in the interest of justice or expedient for protection and safety of judges, witnesses or prosecutors, it may apply to the Chief Justice of the High court concerned for transfer of a case from an Anti-terrorism Court falling within its jurisdiction to an Anti-terrorism Court in any other place in Pakistan and for this purpose shall also seek concurrence of the Chief Justice of the High Court concerned.”; and

(ii) after sub-section (2), the following new sub-sections shall be added, namely:-

- “(3) The Federal Government may in the interests of justice and for protection and safety of witnesses and investigators, transfer the investigation of any case from one place to any other place in Pakistan.
- (4) The investigating officer or the agency to which case is transferred under sub-section (3), may proceed from the stage the inquiry or investigation was left or may proceed with the case as if it had been originally entrusted to him or the agency, as the case may be.
- (5) On completion of investigation and before submission of report under section 173 of the Code, the Federal Government may direct that the case falling in the jurisdiction of a particular Anti-terrorism court may be forwarded for trial to another Anti-terrorism court any where in Pakistan, as may be specified by the Federal Government in this behalf, in the public interests or for the safety and protection of judges, public prosecutors or witnesses.”.

STATEMENT OF OBJECTS AND REASONS

Due to the increasing terrorism in the country, more legislative measures are required to enhance the effectiveness of the law enforcing agencies in tackling heinous crime, specially conferring powers of investigation on Rangers, providing legal cover to Joint Investigation Team (JIT), enabling Police to become complainants in extortion cases, and special provisions for protection of witnesses (faceless) through video recording.

2. The Bill is designed to achieve the aforesaid purpose.

SHAIKH AFTAB AHMED
Minister of State for Parliamentary Affairs
Member-in-Charge

[AS REPORTED BY THE STANDING COMMITTEE]

A

Bill

further to amend the Anti-terrorism Act, 1997

WHEREAS it is expedient further to amend the Anti-terrorism Act 1997 (XXVII of 1997), for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. **Short title and commencement.**—(1) This Act may be called the Anti-terrorism (Amendment) Act, 2014.

(2) It shall come into force at once.

2. **Amendment of section 5, Act XXVII of 1997.**—In the Anti-terrorism Act, 1997 (XXVII of 1997), hereinafter referred to as the said Act, in section 5, in sub-section (2), in paragraph (i), for the words “when fired upon” the words and comma “after forming reasonable apprehension that death, grievous hurt or destruction of property may be caused by such act” shall be substituted.

3. **Amendment of section 11EEEE, Act XXVII of 1997.**—In the said Act, in section 11EEEE,—

(i) for sub-section (1), the following shall be substituted, namely,—

“(1) The Government or, where the provisions of section 4 have been invoked, the armed forces or civil armed forces, as the case may be, subject to the specific or general order of the Government in this regard, for a period not exceeding three months and after recording reasons thereof, issue order for the preventive detention of any person who has been concerned in any offence under this Act relating to the security or defence of Pakistan or any part thereof, or public order relating to target killing, kidnapping for ransom, and extortion/bhatta, or the maintenance of supplies or services, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned, for purpose of inquiry:

Provided that further detention of such person if necessary shall be subject to provisions of Article 10 of the Constitution.”:

- (ii) in sub-section (2), for the full stop, at the end, a colon shall be substituted and thereafter the following proviso shall be inserted, namely:—

“Provided that where the detention order has been issued by the armed forces or civil armed forces under sub-section (1), the inquiry shall be conducted by the JIT comprising members of armed forces or civil armed forces, as the case may be, intelligence agencies and other law enforcement agencies, including a police officer not below the rank of Superintendent of Police.”; and

- (iii) after sub-section (2), amended as aforesaid, the following new sub-section shall be inserted, namely:—

“(2A) The provisions of sub-sections (1) and (2) shall remain in force for such period as may be notified by the Government from time to time:

Provided that such period shall not exceed two years from the commencement of the Anti-terrorism (Amendment Act, 2014 (of 2014).”.

4. **Amendment of section 18, Act XXVII of 1997.**—In the said Act, in section 18, in sub-section (1), the word “Provincial” shall be omitted.

5. **Amendment of section 19, Act XXVII of 1997.**—In the said Act, in section 19,—

- (i) for sub-section (1), the following shall be substituted, namely:—

“(1) An investigating officer under this Act shall be an officer or Police Officer not below the rank of Inspector or equivalent or, if the Government deems necessary Joint Investigation Team to be constituted by the Government shall be headed by an Investigating Officer of Police not below the rank of Superintendent of Police, (BS-18) and other officers of JIT may include equivalent rank from Intelligence Agencies, Armed Forces and Civil Armed Forces. The JIT shall comprise five members and for the meeting purposes the quorum shall consists of three members.

The investigating officer or the JIT, as the case may be, shall complete the investigation in respect of cases triable by the court within thirty working days. The report under section 173 of the Code shall be signed and forwarded by the investigating officer of police directly to the court:

Provided that where the provisions of sections 4 and 5 have been invoked, the investigation shall be conducted by the JIT comprising members of armed forces or civil armed forces, as the case may be, intelligence agencies and other law enforcement agencies including an investigating officer of police not below

the rank of Inspector who shall sign the report under section 173 of the Code and forward it to the Court:

Provided further that, where investigation is not completed within a period of thirty days from the date of recording of the first information report under section 154 of the code, the investigating officer or the JIT shall, within three days after expiration of such period, forward to the Court through the Public Prosecutor, an interim report under section 173 of the Code, stating therein the result of investigation made until then and the Court shall commence the trial on the basis of such interim report, unless, for reasons to be recorded, the Court decides that the trial may not so commence. The interim report shall be signed by the investigating officer of police:

Provided that the head of Law Enforcement Agency having jurisdiction shall conduct an internal review of all actions initiated under this Act on monthly basis.”.

- (ii) after sub-section (1A), the following new sub-section shall be inserted, namely:–
 “(1B) Where any person has been arrested by the armed forces or civil armed forces under section 5, he shall be handed over to the investigating officer of the police station designated for the purpose by the Provincial Government in each District.”;
- (iii) for sub-section (7), the following shall be substituted, namely:–
 “(7) The Court shall, on taking cognizance of a case, proceed with the trial from day-to-day and shall decide the case within seven days, failing which the matter shall be brought to the notice of the Chief Justice of the High Court concerned for appropriate directions, keeping in view the facts and circumstances of the case.”;
- (iv) in sub-section (8), for the words “consecutive adjournments during the trial of the case” the words “adjournments during the trial of the case and that too on imposition of exemplary costs” shall be substituted; and
- (v) in sub-section (8a), after the word “sub-section” the brackets, figure and word “(7) or” shall be inserted.

6. **Insertion of new section, Act XXVII of 1997.**–In the said Act, after section 19A, the following new section shall be inserted, namely:–

“19B Pre-trial scrutiny.–Before commencement of the trial, the Prosecutor shall scrutinize the case file to ensure that all pre-trial formalities have been completed so that the actual trial proceeds uninterrupted from day-to-day.”.

7. **Amendment of section 21, Act XXVII of 1997.**—In the said Act, in section 21.—

- (i) in sub-section (2), after the full-stop, at the end, the following shall be inserted, namely:—

“These measures may include the following, namely:—

- (a) screens may be used during trial to shield witnesses, Judges and Prosecutors from public view;
- (b) trial may be held in jail premises or through video link;
- (c) witness protection programmes may be established by the Government through law or rules.

The Provincial Government shall take necessary steps to ensure that prisoners in Jails do not have access to mobile phones.”; and

- (ii) after sub-section (3), the following new sub-section shall be inserted, namely:—

“(4) The provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force, including the Qanun-e-Shahdat, 1984(P.O.No.10 of 1984).”.

8. **Amendment of section 27, Act XXVII of 1997.**—(1) In the said Act, in section 27. —

- (i) in the short title, after word “investigation” the words “and reward for successful investigation” shall be added;
- (ii) sub-section(1) shall be re-numbered as sub-section (1) of the said section; and
- (iii) after sub-section (1) re-numbered as aforesaid, the following new sub-section shall be inserted, namely,—

“(2) Incentive systems shall be introduced by the Provincial Governments providing for appropriate rewards to investigating officers who conduct successful investigation.”.

9. **Insertion of new section, Act XXVII of 1997.**—In the said Act, after section 27A, the following new section shall be inserted, namely:—

“27B. Conviction may be done on the basis of electronic or forensic evidence etc.—Notwithstanding anything contained in this Act or Qanun-e-shahadat, 1984 (P.O.No.10 of 1984) or any other law for the time being in force, the conviction of an accused for an offence under this Act may be done on the basis of electronic or forensic evidence or such other evidence that may have become available

because of modern devices or techniques referred to in Article 164, of the Qanun-e-Shadat, 1984 (P.O.No.10 of 1984).”.

10. **Amendment of section 28, Act XXVII of 1997.**—In the said Act, in section 28,—

(i) after sub-section (1), the following new sub-section shall be inserted, namely:—

“(1A) Where it appears to the Government that it would be in the interest of justice or expedient for protection and safety of judges, witnesses or prosecutors, it may apply to the Chief Justice of the High court concerned for transfer of a case from an Anti-terrorism Court falling within its jurisdiction to an Anti-terrorism Court in any other place in Pakistan and for this purpose shall also seek concurrence of the Chief Justice of the High Court concerned.”; and

(ii) after sub-section (2), the following new sub-sections shall be added, namely:—

“(3) The Federal Government may in the interests of justice and for protection and safety of witnesses and investigators, transfer the investigation of any case from one place to any other place in Pakistan.

(4) The investigating officer or the agency to which case is transferred under sub-section (3), may proceed from the stage the inquiry or investigation was left or may proceed with the case as if it had been originally entrusted to him or the agency, as the case may be.

(5) On completion of investigation and before submission of report under section 173 of the Code, the Federal Government may direct that the case falling in the jurisdiction of a particular Anti-terrorism court may be forwarded for trial to another Anti-terrorism Court anywhere in Pakistan, as may be specified by the Federal Government in this behalf, in the public interests or for the safety and protection of judges, public prosecutors or witnesses.”.

STATEMENT OF OBJECTS AND REASONS

Due to the increasing terrorism in the country, more legislative measures are required to enhance the effectiveness of the law enforcing agencies in tackling heinous crime, specially conferring powers of investigation on Rangers, providing legal cover to Joint Investigation Team (JIT), enabling Police to become complainants in extortion cases, and special provisions for protection of witnesses (faceless) through video recording.

2. The Bill is designed to achieve the aforesaid purpose.

SHAIKH AFTAB AHMED

Minister of State for Parliamentary Affairs

Member-in-Charge

(Annex - C)

Provided that any person
so detained under this
Act shall be extended
^{compulsary} ^{every fortnight}
a medical supervision by a
qualified doctor ~~of~~ who
shall be ^{either} provided by the
Government or arranged by
the detainee himself, at
the option of the detainee.

Further provided that every
fortnight the detainee
shall be presented before the
review Sessions Judge
~~a magistrate~~ so as to ensure
that appropriate medical
treatment and supervision
are extended to the detainee.

(MGM)

Descend note

NABIL GABOL
NA 246.
SYED ASIF HASNAIN

(Annex-D)

ORDINANCE NO. VII of 2013
COMMENTS FROM MNA DR ARIF ALVI
MEMBER INTERIOR AND NARCOTICS CONTROL COMMITTEE

Pakistan Tehreek-e-Insaf recognizes from the very outset that as a nation, Pakistan is under special circumstances that require extraordinary measures on behalf of the Government (both Federal and Provincial). As a party we believe that the Anti-terrorism laws need to be framed/amended to curb terrorism and to close any loopholes that may currently exist within the Anti-terror legislation framework. Furthermore, it is imperative that convicted terrorists do not go free after committing crimes of such heinous nature.

However, there is also no denying of the logic that such extra ordinary measures must not only be temporary but also capable of bringing about the required results. It is important that the amended anti-terrorism laws do not ordain wide unchecked discretion which results in misuse of powers and provides scope for carrying out acts based on poor judgment of investigating and arresting officers or are used in extortion of bribes at the lower levels.

Unfortunately the Ordinance in its current state, although very well needed, is a recipe of unconstitutional powers, short-sighted policy and a not so great implementation plan. Giving unbridled powers to police and 'armed forces or civil armed forces, as the case may be, intelligence agencies and other law enforcement agencies' cannot be the only solution to get rid of this menace of terrorism. Just because criminals have no bounds, the society must not be forced to think that the only way to deal with them is to give unfettered powers to the countless number of 'forces'.

Pakistan as a nation must set its standards higher than a petty criminal or mafia lord. We must deal with the criminals and terrorists within the bounds we have set of the entire society in the Constitution though keeping the urgent needs in mind. It is pertinent to note that Article 4, 5, 10 and 10A sets out the scheme which must be followed for any legislation while dealing with criminal matters. Furthermore, the Parliament must be reminded that suspension of the Fundamental Rights (Article 10 and 10A) would tantamount to High Treason under Article 6 of the Constitution and Article 8 would declare any law inconsistent where the Fundamental Rights have been voided.

The proposed Anti-terrorism (Amendment) Ordinance 2013 needs to strike a balance between the two competing rights, the right of the state to protect the citizens of Pakistan from the threat of terrorism and, the right of protection of fundamental rights as provided by the Constitution of Islamic Republic of Pakistan 1973.

I have previously filed Objections and Suggestions on the Antiterrorism Amendment Ordinance VIII earlier and some of the terminologies that I objected to are repeated in Ordinance VII.

The suggestions detailed below were verbalized at the meeting very strongly by myself. I was asked to submit the same in writing, which are detailed herein below:

1. Section 5 of the Ordinance has been amended as follows: In **sub-section (2), in paragraph (i), for the words "when fired upon" the words and comma "after forming reasonable apprehension that death, grievous hurt or destruction of property may be caused by such act" shall be substituted. In respect of this please note as under:**
 - (a) The current amendment when read as whole with section of 5 of the Anti-Terrorism Act 1997, reads as follows: "*Any police officer, or a member of the armed forces or civil armed forces who is present or deployed in the area may **after forming reasonable apprehension that death, grievous hurt or destruction of property may be caused by such act, use the necessary force** to prevent commission of terrorist offences or scheduled offences....*"
 - (b) It is pertinent to note that the current amendment does not attempt to define the limits of the '**use of necessary force**' in the event that there is a '**reasonable apprehension that death, grievous hurt or destruction of property may be caused**'. Further, both the PPC and Criminal Procedure Code are silent on the interpretation of the term "reasonable apprehension".
 - (c) As a consequence a police/armed/civil forces officer has wide discretion upon formation of "*reasonable apprehension*" '*use necessary force*' as he/she deems fit for the prevention of terrorism. Both the terms are undefined under the Ordinance and the Act as such ordains wide unchecked powers on those exercising the same. However, Article 14 of Constitution of Pakistan guarantees the inviolability of the dignity of a man, and Article 25 provides entitlement to equal protection as well as equality before the law. It is pertinent to note that the both of the foregoing fundamental rights are absolute in nature, in that there is no exclusion which entitles derogation of the same.
 - (d) In view of the foregoing discussion, it is imperative that the both the formation of "reasonable apprehension" limits of use of such necessary force 'are well defined either under in the Act or the provisions of the Criminal Procedure Code (hereinafter referred to as the "**Code**") which governs the Act.
 - (e) In view of the above, it is clear that there is a requirement for a further amendment to the Act, providing power to the "**interior secretary/inspector general or each province**" to issue codes of practice in connection with 'use of necessary force' by police officers/armed/civil armed forces under the Act. As such, these codes of

practice, could provide *inter alia* provide guidelines on what constitutes 'necessary force' under the Act, define the rank of officer entitled to use or order the use of 'such necessary force', impose reporting requirements on the police/civil/armed officers in respect of providing detail of incidences when such force has been used and identification of individual(s) upon whom such force has been used.

2. Section 5 of the Ordinance has been amended through Section 2 of the Amendment where it is being suggested that the words '*after sufficient warning*' should be inserted. The same words exist in the Pakistan Protection Ordinance in Section 3(1). The result would be consistency between the Pakistan Protection Act and the Antiterrorism Amendment Act VII when passed.
3. The amendments in Section 11EEEE (1) and (2) pertain to the authorization of preventative detention in respect of investigation of any person concerned with the activities defined under the same, and provides for the enquiry to be conducted by the joint investigation team (the "JIT") comprising of members of armed forces or civil armed forces, as the case may be, intelligence agencies and other law enforcement agencies. In respect of these, please note as under:
 - (a) A plain reading of the amendments provides that the scope of the preventative detention has been widened in various respects which include *inter alia* authorities which have power to the grant, and the circumstances in which the same can be issued. In particular, prior to the amendments made via the Ordinance, only the Government had the power to issue an order for preventative detention. Now, in addition to the Government, the armed or civil armed forces have the power (where provisions of section 4 of the Act have been invoked) to issue an order for preventative detention. In addition, previously, a preventative detention order was issued for "any person who has been concerned in any offence under this Act relating to national security and sectarianism". However, now a preventative detention order may be issued in respect of any person who has been concerned with "*any offence under the Act relating to the security or defence of Pakistan or public order relating to the target killing, kidnapping for ransom, and extortion/bhatta, or the maintenance of supplies and services...*"
 - (b) Preventive detention of 90 days is completely unregulated without do's and don'ts. It is unclear as to who is to ensure that these powers will not be used for ulterior motives or book previously missing persons into this. This power must be REGULATED. The 90 days preventative detention period without 'periodic judicial oversight' can lead to a wide abuse of wide powers and compromise the fundamental rights guaranteed under the Constitution. In respect of this the foregoing suggestions are being proposed:

(4)

- i. This power to issue a preventative detention order must be REGULATED.
 - ii. Ensure compliance with Article 10(4) of the Constitution by imposing mandatory obligation for each case of preventive detention order to ONLY be extended after the judicial review requirements contained therein have been satisfied
 - iii. Ensure compliance with procedural safeguards provided in Section 10(5), (6)&(8) of the Constitution
 - iv. The formation of an internal (government appointed) review committee which could evaluate the condition of the detainee and the need for further detention at periodic intervals (every 14 days/month). The pertinent rules for this committee and its constitution can be drafted separately. This changes would also be in line with the 'Proscription Review Committee' described in 11EE(3B) of Ordinance No VIII, though this would be an internal or judicial ex-party review and not made due to an appeal filed by the detainee.
 - v. The legal test which has to be satisfied required before an order can be issued. The amendment provides for there has to be *reasonable suspicion* of a any person to be concerned with specific activities.
 - vi. Provide power to Interior Secretary to issue guidelines/define rules in respect of the foregoing.
4. 'Credible Source' has not been defined in Ordinance VIII and also here the same anomaly continues in the form of 'credible information'. It is important for the sake of clarity and in order to provide for an effective piece of legislation that credible source and credible information should be defined.
5. The formation of a JIT has been frequently mentioned in the Ordinance including Section 11EEEE thereof. In respect of the JIT, please note as hereunder:
 - (a) There is no distinction as to whether law and order is primary responsibility of *armed forces or civil armed forces, as the case may be, intelligence agencies and other law enforcement agencies* OR JOINT. If it is joint there is no pyramid of power. 'Any officer' has been given the POWER to use 'necessary force'. Whereas JIT is for 'investigation' alone. Arrest, investigation and prosecution are three separate matters. JIT has NOT been given any credible powers, responsibilities, or jurisdiction. Inter-forces coordination is not there in the Ordinance. As such the entire structure of the 'force' needs to be provided with precision, clarity and jurisdiction failing which we may find 'officers' killing people in the name of 'necessary' force without accountability.
 - (b) The proposed amendments could be as follows:

(5)

- i. The composition/membership of the JIT should be restricted to officers of Grade 18 and above.
 - ii. The minimum number of members should be five.
 - iii. The quorum should be three.
 - iv. The hierarchy of JIT should be defined clearly including as to who would be the head of this team.
 - v. The rules and procedures of the JIT should be defined detailing the frequency of meetings and closure of cases within a limited time frame to avoid lengthy delays.
6. In respect of a legislation which presents the problematic scenario where the judge, jury and executioner is the respective officer in the field who can use necessary force as he deems fit and cause serious harm to an alleged terrorist, it is imperative to provide for the following:
 - (a) A mechanism to train and educate the respective officers using such wide powers;
 - (b) Formation of an internal review board of Grade 18 officers within the department which meets on a monthly basis to evaluate all cases which have led to loss of life to examine if exercise of discretion has been carried out properly and that due process has been followed. If not an internal detailed inquiry should be carried out monthly and reported to the Government.
 - (c) There is a very serious need to de-code this anti-terrorism policy by way of detailed rules, regulations and guidelines, and enough emphasis is required in respect of the following matters:
 - i. There is required to be provided an anti-terrorism Board/Authority with Federal and Provincial participation which must act as the overall supervisor, regulator and policy implementer.
 - ii. Anti-terrorism legislation must be time bound i.e. subject to ratification/re-approval from the Parliament on yearly basis with sufficient protection of the acts of each passing year in order to ensure return to normal legal system at the earliest possible.
 - iii. An internal Pre-trial process must be triggered either prior or at least within 24 hours of every arrest made with confidentiality restrictions as required
7. In the new Section 27 (B) being proposed through Section 9 of the Amendment Act which is titled as "*Conviction solely on the basis of electronic or forensic evidence etc.*" the word solely must be removed and changed to "*Conviction may be done on the basis of...*". A similar change must be made in the body of the section. The reason is that some corroborative evidence must exist because electronic evidence like voice recordings, videos etc. can be tampered with. Similarly DNA samples can also be tampered with or deliberately placed to trap

(6)

individuals. Without corroborative evidence miscarriage of justice is a very distinct possibility.

8. **Pakistan Tehreek-e-Insaf believes very strongly that the Anti Terrorism Act as modified should come under yearly review of Parliament.**

MRS.NAEEMA KISHWAR KHAN,MNA

(Annex-E)

NOTE OF DISSENT (ORDINANCE NO. 2 & 8)

1. The words "reasonable complaint" and "reasonable doubt" used in Ordinance No. 2 , 8, 9 of 2013 i.e. in Anti Terrorism Act are required to be clearly defined so that innocent persons may not get affected thereby.
2. In this Ordinance/Anti Terrorism Act, under sub-clause 1 of clause 3, security body would be authorized to keep in its custody any person on the basis of suspicion for upto 3 months. If the accused dies during the course of time due to violence or any other cause, nobody would be held responsible. Therefore we do not agree with it. The persons may be kept in custody upto 90 days but he should be produced before the court after every fortnight and their due remand be sought from the court. The clause 5 of the said Ordinance provides that JIT would complete the investigation in thirty days then what's the need to detain upto 90 days? Under clause 9 of the said Ordinance, conviction would be passed only on the basis of electronic or Forensic evidence. It is also unjust because there exists all the probability of forgery. Hence it be deleted.

Thanks,

Mrs.Naeema Kishwer Khan
MNA